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of the State of California  
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Attorneys for Complainant

**BEFORE THE  
CALIFORNIA STATE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

APLONIO B. TULIAO  
a.k.a. APOLONIO Banatao Tuliao  
a.k.a. Paul Tuliao  
a.k.a. Apollo Tuliao  
73 Nursery Way  
South San Francisco, California 94080  
  
Original Pharmacy Technician Registration No.  
TCH 36770

Respondent.

Case No. 2952

OAH No.

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 1, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 2952 against APLONIO B. TULIAO, a.k.a. Apolonio Banatao Tuliao, a.k.a. Paul Tuliao, a.k.a. Apollo Tuliao (Respondent).

2. On or about March 8, 2001, the California State Board of Pharmacy (Board) issued Original Pharmacy Technician Registration Number TCH 36770 to Respondent. The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

1                   3.       On or about March 10, 2006, Esther McDonald, an employee of the  
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
3 2952, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
5 which was and is 73 Nursery Way, South San Francisco, California 94080. A copy of the  
6 Accusation is attached as Exhibit A, and is incorporated herein by reference.

7                   4.       Service of the Accusation was effective as a matter of law under the  
8 provisions of Government Code section 11505, subdivision (c).

9                   5.       Government Code section 11506 states, in pertinent part:

10                   "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
12 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
13 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14                   6.       Respondent failed to file a Notice of Defense within 15 days after service  
15 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
16 Accusation No. 2952.

17                   7.       Government Code section 11520 states, in pertinent part:

18                   "(a) If the respondent either fails to file a notice of defense or to appear at the  
19 hearing, the agency may take action based upon the respondent's express admissions or upon  
20 other evidence and affidavits may be used as evidence without any notice to respondent."

21                   8.       Pursuant to its authority under Government Code section 11520, the Board  
22 finds that Respondent is in default and has waived his right to a hearing. The Board will take  
23 action without further hearing and, based on the evidence on file herein, determines that the  
24 allegations in Accusation No. 2952 are true.

25                   9.       The total costs for investigation and enforcement are \$4,581.50 as of  
26 March 27, 2006.

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DETERMINATION OF ISSUES

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2                   1.       Based on the foregoing findings of fact, Respondent has subjected his  
3 Original Pharmacy Technician Registration No. TCH 36770 to discipline.

4                   2.       Service of the Accusation and the related documents was proper and in  
5 accordance with the law.

6                   3.       The agency has jurisdiction to adjudicate this case by default.

7                   4.       The Board is authorized to revoke Respondent's Original Pharmacy  
8 Technician Registration No. TCH 36770 based upon the following violations alleged in the  
9 Accusation:

10                  a.       Business and Professions Code (Code) section 4300 on the grounds of  
11 unprofessional conduct, as defined by section 4301(f) of the Code, in that between on or about  
12 October 5, 2004 and April 2, 2005, Respondent, while employed as a pharmacy technician at  
13 Walgreens Pharmacy, stole and/or fraudulently and deceitfully diverted from the pharmacy  
14 supply unknown quantities of the following controlled substances and dangerous drugs: Vicodin  
15 5 mg, Vicodin 7.5 mg, Vicodin 10 mg, Viagra 50 mg, Viagra 100 mg, Cialis, Ery-Tab, Celebrex,  
16 Amoxil, Zyprexa, Olum Foam, Differin, and Ortho Evra.

17                         The circumstances surrounding Respondent's conduct are that between  
18 approximately October 25, 2004 and April 2, 2005, Respondent, while employed as a pharmacy  
19 technician at Walgreens Pharmacy, stole and then sold an unknown quantity of the controlled  
20 substances, Vicodin 5 mg, Vicodin 7.5 mg, and Vicodin 10 mg, and the dangerous drugs, Viagra  
21 and Cialis, to an individual in San Francisco, California. Respondent made a profit of  
22 approximately \$3,500.00 from illegally selling the above-mentioned controlled substances and  
23 dangerous drugs. Between approximately October 25, 2004 and April 2, 2005, Respondent gave  
24 away to family members or friends the following dangerous drugs that he had stolen from his  
25 place of employment, Walgreens Pharmacy: Ery-Tab, Celebrex, Amoxil, Zyprexa, Olux Foam,  
26 Differin, and Ortho Evra. The total dollar value of the controlled substances and dangerous  
27 drugs stolen by Respondent was \$6,203.38.

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b. Code section 4301(j) (violating statutes regulating controlled substances and dangerous drugs) in that by engaging in the conduct set forth above, Respondent violated sections 4059 and 4060 of the Code, and Health and Safety Code sections 11173(a), 11350(a), 11351(a), and 11352(a).

c. Sections 490 and 4301(1) of the Code in that on or about June 16, 2005, Respondent was convicted on his plea of nolo contendere of the substantially related crimes of violating Penal Code sections 487(a)/508 (grand theft), a felony, and 666 (petty theft; prior convictions of certain offenses), a felony. The factual circumstances of the convictions are set forth above.

ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 36770, heretofore issued to Respondent Aplonio B. Tuliao, Apolonio Banatao Tuliao, a.k.a. Paul Tuliao, a.k.a. Apollo Tuliao, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 31, 2006.

It is so ORDERED May 1, 2006

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

Attachment:

Exhibit A: Accusation No.2952

By

STANLEY W. GOLDENBERG  
Board President

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Exhibit A  
Accusation No. 2952

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of the State of California  
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**BEFORE THE  
CALIFORNIA STATE BOARD OF PHARMACY  
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In the Matter of the Accusation Against:

Case No. 2952

APLONIO B. TULIAO  
a.k.a. Apolonio Banatao Tuliao  
a.k.a. Paul Tuliao  
a.k.a. Apollo Tuliao  
73 Nursery Way  
South San Francisco, California 94080

**ACUSATION**

Original Pharmacy Technician Registration No.  
TCH 36770

Respondent.

Complainant alleges:

**PARTIES**

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California State Board of Pharmacy.
2. On or about March 8, 2001, the California State Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 36770 to APLONIO B. TULIAO, a.k.a. Apolonio Banatao Tuliao, a.k.a. Paul Tuliao, a.k.a. Apollo Tuliao (Respondent). The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

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1           8.       Section 4022 of the Code defines a dangerous drug, as follows:

2           "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
3 self-use, except veterinary drugs that are labeled as such, and includes the following:

4           "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
5 without prescription," "Rx only," or words of similar import.

6           "(b) Any device that bears the statement: "Caution: federal law restricts this  
7 device to sale by or on the order of a \_\_\_\_\_," "R's only," or words of similar import, the  
8 blank to be filled in with the designation of the practitioner licensed to use or order use of the  
9 device.

10           "(c) Any other drug or device that by federal or state law can be lawfully  
11 dispensed only on prescription or furnished pursuant to Section 4006."

12           9.       Section 4059 of the Code states, in pertinent part, that a person may not  
13 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
14 optometrist, or veterinarian.

15           10.      Section 4060 of the Code states:

16           "No person shall possess any controlled substance, except that furnished to a  
17 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished  
18 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse  
19 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This  
20 section shall not apply to the possession of any controlled substance by a manufacturer,  
21 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse  
22 practitioner, or physician assistant, when in stock in containers correctly labeled with the name  
23 and address of the supplier or producer.

24           Nothing in this section authorizes a certified nurse mid-wife, a nurse practitioner,  
25 or a physician assistant to order his or her own stock of dangerous drugs and devices."

26           11.      Section 490 of the Code provides, in pertinent part, that the Board may  
27 suspend or revoke a license when it finds that the licensee has been convicted of a crime  
28 substantially related to the qualifications, functions, or duties of the business or profession for



which the license was issued.

12. Health and Safety Code section 11173(a) provides, in pertinent part, that no person shall obtain or attempt to obtain controlled substances by fraud, deceit, misrepresentation, subterfuge or by concealment of a material fact.

13. Health and Safety Code section 11350(a) provides, in pertinent part, that no person shall possess any controlled substance, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

14. Health and Safety Code section 11351(a) provides, in pertinent part, that no person shall possess any controlled substance for sale, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

15. Health and Safety Code section 11352(a), provides, in pertinent part, that no person shall transport, sell, furnish, or give away any controlled substance, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

16. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

17. **“Vicodin”**, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and Professions Code section 4022. Vicodin is a brand name for the narcotic substance **Hydrocodone** (a semisynthetic narcotic analgesic and antitussive with multiple actions qualitatively similar to those of codeine) with the non narcotic substance acetaminophen.

18. **“Viagra”** is the brand name for Sildenafil Citrate, a dangerous drug pursuant to Business and Professions Code section 4022, in that said drug can be lawfully dispensed only on prescription.

1                   19.    **“Cialis”** is the brand name for Tadalafil, a dangerous drug pursuant to  
2 Business and Professions Code section 4022, in that said drug can be lawfully dispensed only on  
3 prescription.

4                   20.    **“Ery-Tab”** is the brand name for Erythromycin, a dangerous drug pursuant  
5 to Business and Professions Code section 4022, in that said drug can be lawfully dispensed only  
6 on prescription.

7                   21.    **“Celebrex”** is the brand name for Celecoxib, a dangerous drug pursuant to  
8 Business and Professions Code section 4022, in that said drug can be lawfully dispensed only on  
9 prescription.

10                  22.    **“Amoxil”** is the brand name for Amoxicillin, a dangerous drug pursuant to  
11 Business and Professions Code section 4022 in that said drug can be lawfully dispensed only on  
12 prescription.

13                  23.    **“Zyprexa”** is the brand name for Olanzapine, a dangerous drug pursuant to  
14 Business and Professions Code section 4022, in that said drug can be lawfully dispensed only on  
15 prescription.

16                  24.    **“Olux Foam”** is the brand name for Clobetasol Propionate, a dangerous  
17 drug pursuant to Business and Professions Code section 4022, in that said drug can be lawfully  
18 dispensed only on prescription.

19                  25.    **“Differin”** is the brand name for Adapalene, a dangerous drug pursuant to  
20 Business and Professions Code section 4022, in that said drug can be lawfully dispensed only on  
21 prescription.

22                  26.    **“Ortho Evra”** is the brand name for Norelgestromin/Ethinyl Estradiol, a  
23 dangerous drug pursuant to Business and Professions Code section 4022, in that said drug can be  
24 lawfully dispensed only on prescription.

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**FIRST CAUSE FOR DISCIPLINE**

**(Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit)**

27. Respondent has subjected his license to discipline under section 4300 of the Code on the grounds of unprofessional conduct, as defined by section 4301(f), in that between on or about October 5, 2004 and April 2, 2005, Respondent, while employed as a pharmacy technician at Walgreens Pharmacy, stole and/or fraudulently and deceitfully diverted from the pharmacy supply unknown quantities of the following controlled substances and dangerous drugs, as referenced in paragraphs 17 through 26:

- a. **Vicodin 5 mg**
- b. **Vicodin 7.5 mg**
- c. **Vicodin 10 mg**
- d. **Viagra 50 mg**
- e. **Viagra 100 mg**
- f. **Cialis**
- g. **Ery-Tab**
- h. **Celebrex**
- i. **Amoxil**
- j. **Zyprexa**
- k. **Olux Foam**
- l. **Differin**
- m. **Ortho Evra**

28. The circumstances surrounding Respondent's conduct are hereinafter set forth. Between approximately October 25, 2004 and April 2, 2005, Respondent, while employed as a pharmacy technician at Walgreens Pharmacy, stole and then sold an unknown quantity of the controlled substances Vicodin 5 mg, Vicodin 7.5 mg, and Vicodin 10 mg, and the dangerous drugs, Viagra and Cialis, to an individual in San Francisco, California. Respondent made a profit of approximately \$3,500.00 from illegally selling the above-mentioned controlled substances and dangerous drugs. Between approximately October 25, 2004 and April 2, 2005, Respondent gave

1 away to family members or friends the following dangerous drugs that he had stolen from his  
2 place of employment, Walgreens Pharmacy: Ery-Tab, Celebrex, Amoxil, Zyprexa, Olux Foam,  
3 Differin, and Ortho Evra. The total dollar value of the controlled substances and dangerous drugs  
4 stolen by Respondent was \$6,203.38.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)**

7 29. Paragraphs 27 and 28 above are herein incorporated by reference as though  
8 fully set forth.

9 30. The conduct of Respondent, as set forth in paragraphs 27 and 28 above,  
10 constitutes violations of Code section 4059 and 4060 and Health and Safety Code sections  
11 11173(a), 11350(a), 11351(a), and 11352(a), and accordingly provides grounds for disciplinary  
12 action under Code section 4301(j) (violation of statutes regulating controlled substances and  
13 dangerous drugs).

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Criminal Convictions)**

16 31. Respondent is subject to discipline under sections 490 and 4301(1) of the  
17 Code in that Respondent was convicted of crimes, substantially related to the qualifications,  
18 functions, or duties of a pharmacy technician, in that on or about June 16, 2005 in the Superior  
19 Court of California, County of San Mateo, Case Number NF34856A, entitled The People of the  
20 State of California v. Apolonio Banatao Tuliao, a.k.a. Paul Tuliao, a.k.a. Apollo Tuliao,  
21 Respondent was convicted on his plea of nolo contendere of violating Penal Code sections  
22 487(a)/508 (grand theft), a felony, and 666 (petty theft; prior convictions of certain offenses), a  
23 felony. The factual circumstances of the convictions are as set forth above in paragraphs 27, 28,  
24 29, and 30.

25 **PRAYER**

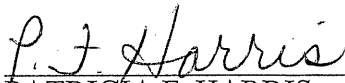
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
27 alleged, and that following the hearing, the Board issue a decision:

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- 1                   A.     Revoking or suspending Original Pharmacy Technician Registration  
2     Number TCH 36770, issued to APLONIO B. TULIAO;  
3                   B.     Ordering APLONIO B. TULIAO to pay the California State Board of  
4     Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
5     Business and Professions Code section 125.3;  
6                   C.     Taking such other and further action as deemed necessary and proper.

7     DATED: 3/1/06

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PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
State of California  
Complainant

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